

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 13TH JULY 2007 / 22ND ASHADHA 1929

RSA.No. 441 of 2007()

AS.92/2002 of I ADDL. DISTRICT COURT, PALAKKAD
OS.232/1998 of MUNSIF COURT, ALATHUR
.....

: APPELLANTS/APPLANTS/DEFENDANTS

1. CHATHI, D/O VELAN,
KARAKULAM, KAZHNI AMSOM AND DESOM,
ALATHUR TALUK, PALAKKAD DISTRICT.

2. KUTTAN, S/O VELAN,
-DO- -DO-.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS: RESPONDENT/PLAINTIFF

VELAYUDHAN, S/O ANDI,
ERAKALAM, KAVASERI AMSOM AND DESOM,
ALATHUR TALUK, PALAKKAD DISTRICT.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION
ON 13/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

.....
R.S.A.No. 441 OF 2007
.....

DATED THIS THE 13th DAY OF JULY, 2007

JUDGMENT

Defendants in O.S.232 of 1998 on the file of Munsiff Court, Alathur are the appellants. Respondent is the plaintiff. Respondent instituted the suit seeking a decree for fixation of boundary and for recovery of possession on the strength of title and for a permanent prohibitory injunction. The plaint schedule property admittedly originally belonged in jenmom to Poomully Mana. According to the respondent, it was obtained by Rakkan alias Vella as per verumpattomlease. Under Ext.A1 sale deed 1627/1960 it was assigned to the respondent. He claims title to the plaint schedule property. Contending that a portion of plaint A schedule property was trespassed upon by the appellants, suit was instituted for fixation of boundary and for recovery of that portion of the property which was trespassed upon by appellants and for permanent prohibitory injunction in respect of the remaining property. Appellants in their written statement contended that 53 cents of land originally belonged to Vasu Nair as per kanam right and Chathu obtained it on lease and as per the gift deed it was given to appellants and they are in

possession of the property and they have title to the property.

2. Learned Munsiff on the evidence of PW1 and Dws 1 and 2 and Exts.A1 to A3(i) and Ext.C1 and C2 upheld the case of respondents holding that respondent has title to the plaint schedule property and they are entitled to the recovery of possession of the yellow coloured portion marked in Ext.C2 plan and a decree for injunction in respect of the remaining property. Appellants challenged the decree and judgment before District Court, Palakkad in A.S.92 of 2002. Learned Additional District Judge, on reappreciation of evidence, confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for the appellant was heard. The argument of learned counsel appearing for appellant is that neither the weakness of the defence case nor the failure of the defendant to prove his case will enable the respondent to claim a decree for recovery of possession on the strength of title and courts below did not properly appreciate the evidence and should have found that Commissioner has not identified the property properly with reference to Ext. A1 and therefore the decree and judgment are unsustainable.

4. On hearing learned counsel appearing for appellants and

going through the judgments of the courts below, I do not find any substantial question of law involved in the appeal. Respondent is tracing out the title under Ext.A1. Courts below, relying on the report of the Commissioner, who identified the plaint schedule property with the assistance of the Surveyor, held that the property of the appellant which is admittedly situated to the east of the property of respondent, is in Survey No. 85/2 and the property of the respondent is in Survey No.85/1 and upheld the title of respondent to the plaint schedule property including the disputed portion. Though learned counsel argued that identification by the Commissioner is not correct and it should not have been accepted, trial court and first appellate court on appreciation of evidence found that property was properly identified and the disputed portion of the property forms part of the property covered under Ext.A1. That factual finding cannot be interfered by reappreciating the evidence and substituting the finding of this court to that of the courts below. As no substantial question of law is involved in the appeal, the appeal is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-